

ADDITIONAL FEE:

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R E M A R K S

The Office Action issued April 26, 2006 has been received and its contents have been carefully considered.

The claims of this application have been carefully reviewed to render them clear and definite and to render their language consistent throughout the independent claim 1 and its dependent claims 2-20.

Claim 1 has also been amended to make clear that the "easily removable child's support rail for a bathtub" consists of essentially three elements:

- (a) a elongate horizontal hand rail;
- (b) two horizontal anchors connected substantially perpendicularly to the hand rail...for attachment to the back wall of the bathtub; and
- (c) two vertical anchors connected substantially perpendicularly to the hand rail...for attachment to the bottom surface of the bathtub.

Figs. 1 and 2 show the preferred embodiment of this bathtub support rail.

Claim 20 has been amended to delete the recitation that the hand rail is "sealed at its ends to contain liquid in (sic) decorative objects disposed therein." Claim 20 now recites only that the "hand rail is constructed of a transparent material."

The use of transparent material for the hand grasping rail is supported in the specification on page 5, line 8. The drawings are believed to be adequate for this amended claim 20 since they show plastic piping that can be of any color, or be transparent.

The specification has been amended on page 9, line 11, to change the reference numeral "38" to -- 38A and 38B --.

The Examiner has objected to the specification as failing to provide "proper antecedent basis" for the "substantially perpendicularly" feature (both recitations) and "extending parallel" feature (both recitations) set forth in claim 1. Such antecedent basis is believed to be provided on page 3, first paragraph. The Examiner also questions the antecedent basis for the subject matter set forth in claims 3, 4, 7 and 15. Such antecedent basis is believed to be found on page 4, first paragraph ("equal

length"), page 4, lines 13 and 14 ("at least two pieces") and page 4, last paragraph, and page 5, first paragraph ("at least one piece").

Claim 1, as originally presented, stands rejected under 35 USC §102(b) as being anticipated by Van Riemsdyck. Claim 1 has also been rejected under 35 USC §103(a) as being unpatentable under Tilson et al., Van Riemsdyck, Sullivan as well as Morrison. As they may apply to claim 1, as presently amended, these rejections are respectfully traversed for the reasons given below.

In addition, claims 4, 13 and 14 stand rejected under 35 USC §103(b) as being unpatentable over Van Reimsdyck and Slater. This rejection is also respectfully traversed for the reasons given below.

Van Reimsdyck discloses a "bathtub support device" which forms a two level platform and seat, to help infirm bathers get in and out of the bathtub and enhance comfort when in the tub if the bather cannot sit at the bottom of the tub. The Van Reimsdyck device uses piping and incorporates horizontal as well as vertical anchors, as does the present invention, but the device does not at all resemble the bathtub rail of the present invention nor was it designed to serve the same purpose.

Rather than providing two seats, the present invention provides a single horizontal hand rail which may be grasped by a child.

The patent to Morrison discloses a bathtub support device which extends horizontally between the two side walls of a tub. The device is a metal pole that is intended to span the short side of the tub adjacent to the faucet. It is installed by pushing outward pressure on the walls of the tub to hold the device in place.

In contrast, the bathtub support rail of the present invention is designed to span the length of the bathtub, affixed to the back wall as well as the bottom of the tub. No outward pressure is required to hold it in place.

The patent to Tilson discloses a safety rail for bathtubs which mounts both to the top of the bathtub and to the floor outside of the tub. Indeed, the safety rail is arranged entirely outside the space contained by the tub, and would therefore be unsuitable for a child. As an additional feature, the Tilson device includes an external seat.

The patent to Sullivan discloses a vertical grab bar for a shower stall. While this device may use some of the same parts as does the present invention recited in claim 1,

its configuration and purpose are completely different from that of the present invention.

The patent to Slater, finally, discloses a foldable hot tub seat; that is, a foldable seat designed to be installed in a hot tub. The device can be folded to allow for unobstructed use of the hot tub.

The removable bathtub support rail according to the present invention connects with suction cups to both the back wall and the floor of a bathtub. The horizontal hand rail allows a child to sit on the floor of a tub while promoting free movement and allowing the child to traverse the tub with confidence.

Although the present invention comprises a number of parts, such as bars, elbows, tees and suction cups which are shown in various ones of the cited references, the case law is quite clear that the mere existence of various elements of an invention in diverse references is not sufficient to render the invention obvious. As stated by the Court of Appeals for the Federal Circuit in Environmental Designs, Ltd. v. Union Oil of Cal., 218 USPQ 865, 870 (1983):

"That all elements of an invention may have been old (the normal situation), or some old and some new, or all new, is however, simply irrelevant. Virtually all inventions are combinations and virtually all are combinations of old elements. A court must consider

what the prior art as a whole would have suggested to one skilled in the art."

On several occasions the Court of Customs and Patent Appeals has discussed the conditions that must be met to properly combine references in rejecting a claimed invention as being "obvious". As stated in In re Imperato, 179 USPQ 730, 732 (1973):

"With regard to the principal rejection, we agree that combining the teaching of Schaefer with that of Johnson or Amberg would give the beneficial result observed by appellant. However, the mere fact that those disclosures can be combined does not make the combination obvious unless the art also contains something to suggest the desirability of the combination. In re Bergel, 48 CCPA 1102, 292 F.2d 955, 130 USPQ 206 (1961). We find no such suggestion in these references". [Emphasis in original]

Similarly, as stated by the Patent and Trademark Office Board of Appeals in Ex parte Shepard and Gushue, 188 USPQ 536, 538 (1974):

"The mere fact each reference discloses some particular claimed elements is not sufficient for obviousness without some direction from the prior art."

Similarly, as stated by the Court of Customs and Patent Appeals in In re Regel, Buchel and Plempel, 188 USPQ 136, 139 (1975):

"As we have stated in the past, there must be some logical reason apparent from positive, concrete evidence of record which justifies a combination of primary and secondary references. In re Stemniski, supra. Further, as we stated in In re Bergel, 48 CCPA

1102, 1105, 292 F.2d 955, 956, 130 USPQ 206, 208 (1961):

'The mere fact that it is possible to find two isolated disclosures which might be combined in such a way to produce a new compound does not necessarily render such production obvious unless the art also contains something to suggest the desirability of the proposed combination.'"

Similarly, as stated by the Court of Customs and Patent Appeals in In re Skoll, 187 USPQ 481, 483-4 (1975):

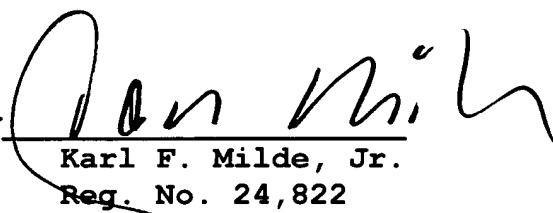
"We agree with appellant that the general rule applicable to a rejection based on a combination of references was stated by this court in In re Shaffer, 43 CCPA 758, 761-62 229 F.2d 476, 479, 108 USPQ 326, 328-29 (1956):

'[R]eferences may be combined for the purpose of showing that a claim is unpatentable. However, they may not be combined indiscriminately and to determine whether the combination of references is proper, the following criterion is often used: Namely, whether the prior art suggests doing what an applicant has done \* \* \*. [I]t is not enough for a valid rejection to view the prior art in retrospect once an applicant's disclosure is known. The art applied should be viewed by itself to see if it fairly disclosed doing what an applicant has done.'" (emphasis supplied)

In each instance, the holding is that obviousness is not found merely because references could be combined to achieve a claimed invention. For an obviousness rejection to be proper under Section 103 of the Patent Statute, the combination must at least be suggested by the references.

Since claim 1 has been amended to clearly demarcate the invention over the various configurations shown in the references, and since the claims have been amended to render them clear and definite, this application is now believed to be in condition for immediate allowance. A formal Notice of Allowance is accordingly respectfully requested.

Respectfully submitted,

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on JUNE 2, 2006  
MILDE & HOFFBERG, LLP

By   
Date JUNE 2, 2006